

**DISCLAIMER**

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**COMMONWEALTH OF VIRGINIA, ex rel.**

**NORTHERN VIRGINIA ELECTRIC COOPERATIVE,**  
**Petitioner,**

**v.**

**CASE NO. PUE010512**

**VIRGINIA ELECTRIC AND POWER COMPANY  
d/b/a DOMINION VIRGINIA POWER,  
SMITHSONIAN INSTITUTION, AND U. S.  
GENERAL SERVICES ADMINISTRATION,**

**Respondents.**

**For a Petition for Declaratory Judgment  
and Motion for Injunction**

**HEARING EXAMINER'S RULING**

**November 2, 2001**

On September 17, 2001, Northern Virginia Electric Cooperative ("NOVEC") filed a Petition for Declaratory Judgment and Motion for Injunction. Therein NOVEC petitioned the Commission to declare that the proposed sale of electric energy by Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Virginia Power") to the Smithsonian Institution ("Smithsonian") and/or the U.S. General Services Administration ("GSA") for consumption at facilities to be located in Fairfax County, Virginia violates Virginia law and the property rights of NOVEC under its certificate of public convenience and necessity granted by the Commission pursuant to the Utility Facilities Act, Chapter 10.1 of Title 56 of the Code of Virginia. The Smithsonian is building the Steven F. Udvar-Hazy Center, National Air and Space Museum in Dulles, Virginia. The Petition alleges that the "footprint" of the facility, and thus the bulk of the load to be consumed, would be located in the service territory of NOVEC. The Petition names Dominion Virginia Power, the Smithsonian and the GSA as respondents. NOVEC also petitioned the Commission to temporarily and permanently enjoin Virginia Power from selling and delivering directly or indirectly any power to the Smithsonian.

On October 2, 2001, the Commission issued a Preliminary Order. The Commission assigned this matter to a hearing examiner, directed NOVEC and Virginia Power to file a joint stipulation of facts and issues upon which they agree and also upon which they disagree, and scheduled an oral argument on the request for an injunction pendente lite.

On October 12, 2001, Virginia Power filed its Answer denying that its sale of electricity to the Smithsonian violates Virginia law and a Counter Petition seeking a

declaration that it has the statutory and legal obligation to provide service to the entire Smithsonian facility.

Also on October 12, 2001, the U.S. Department of Justice accepted the Commission's invitation to offer comments on the matter in dispute and filed the United States' Response on behalf of the Smithsonian and the GSA<sup>1</sup>. The Smithsonian addressed its practical concerns and support for Virginia Power to provide service to the new museum. Therein, it emphasized that its paramount and practical concern was that the phased construction of the museum not be compromised. It asserts that only timely completion of each phase will ensure that the facility to be open in December 2003, the centennial of the first powered flight by the Wright Brothers on December 17, 1903. That date is significant because (1) many individuals and corporate donors who provided funding expect completion of this air and space museum by that anniversary date; (2) the project's time line for completion could be endangered by scheduling changes; and (3) the museum plans to take advantage of the unique educational opportunities associated with opening on the centennial of the Wright Brothers' first flight. The Smithsonian represents that the planned delivery and installation by Virginia Power of its first transformer is in November 2001, and is on the critical path of the construction schedule. It is contended that the contractor must have that additional power by April 1, 2001 to maintain its schedule.

By hearing examiner ruling dated October 22, 2001, a Motion for Leave to Participate filed by Old Dominion Electric Cooperative ("ODEC") and the Association of Virginia, Maryland and Delaware Cooperatives ("the Association") was also granted.

On October 25, 2001, an oral argument was held on the NOVEC's Motion for Injunction, Pendente Lite. The parties presented arguments in support of the positions taken in their filed pleadings. Staff and the parties filed briefs on the Motion on November 1, 2001, and it is pending. Regardless of the action on that Motion, however, it is clear that time is of the essence to the parties. I find therefore that it is of paramount importance that an expedited schedule be established on the merits of this matter. Accordingly,

**IT IS DIRECTED THAT:**

(1) A public hearing is hereby scheduled to begin December 11, 2001, at 10:00 a.m., in the Commission's second floor courtroom, located in the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, for the purpose of receiving evidence on the Petition;

(2) On or before November 19, 2001, NOVEC shall file with the Clerk of the Commission, Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, an original and fifteen (15) copies of any testimony and exhibits that it intends to present at the hearing. Copies should be served on all parties of record to this proceeding and counsel for the Staff by hand

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<sup>1</sup> The Response also noted that the GSA has played no role in the events that have led to the dispute in this case. (Response at 2, footnote 1).

delivery, facsimile delivery, electronic mail or overnight delivery. Service upon counsel for the Commission shall be directed to Sherry H. Bridewell, Senior Counsel, and Wayne Smith, Senior Counsel, Office of General Counsel, State Corporation Commission, Tyler Building, Tenth Floor, 1300 East Main Street, Richmond, Virginia 23219;

(3) On or before noon on November 21, 2001, ODEC and the Association shall file with the Clerk of the Commission, an original and fifteen (15) copies of any testimony and exhibits that they intend to present at the hearing and deliver copies to Staff and the other parties in the same manner prescribed for delivery in Paragraph 2;

(4) On or before November 28, 2001, Virginia Power and the Smithsonian shall file with the Clerk of the Commission an original and fifteen (15) copies of any testimony and exhibits that they intend to present at the hearing, and deliver copies of the same to Staff and the other parties in the same manner prescribed for delivery in Paragraph 2;

(5) On or before November 30, 2001, Staff may file with the Clerk of the Commission, Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, an original and fifteen (15) copies of any testimony and exhibits that it intends to present at the hearing and deliver copies to the parties in the same manner prescribed for delivery in Paragraph 2; and

(6) On or before December 5, 2001, NOVEC shall file with the Clerk of the Commission, Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, an original and fifteen (15) copies of any rebuttal testimony and exhibits and deliver copies to the parties in the same manner prescribed in Paragraph 2.

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Deborah V. Ellenberg  
Chief Hearing Examiner